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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/031,543	09/26/2002	Michel Zandian	41756/268947	6587

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EXAMINER
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SZMAL, BRIAN SCOTT

ART UNIT	PAPER NUMBER
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3736

DATE MAILED: 08/12/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/031,543	<b>Applicant(s)</b> ZANDIAN ET AL.	
	<b>Examiner</b> Brian Szmal	<b>Art Unit</b> 3736	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 17 June 2005.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-16 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

***Claim Objections***

1. Claims 4 and 12 are objected to because of the following informalities: In both claims, "said feedback through at least two signals" lacks antecedent basis due to Claims 1 and 9 only state the use of a single signal. Appropriate correction is required.
2. Claim 1 is objected to because of the following informalities: In lines 9-10, "said memory" lacks antecedent basis. Appropriate correction is required.
3. Claim 2 is objected to because of the following informalities: In line 3, "parameters weight" should read as "parameters of weight". Appropriate correction is required.
4. Claims 5 and 13 are objected to because of the following informalities: The phrase: "said output signals" lack antecedent basis and appear it should read as "said output signal". Appropriate correction is required.

***Claim Rejections - 35 USC § 112***

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:  
  
The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
6. Claims 1-16 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.  
  
Regarding Claims 1-3 and 9-11, the use of the word "dieting" renders the claims indefinite. The term "dieting" refers to the intake of food, while the claims are trying to tie

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the word "dieting" to physical movement of a limb. It appears that the phrase "preferred level of dieting" should read as "preferred level when dieting", in Claims 1, 2, 9 and 10; and "movements for dieting" should read as "movements when dieting", in Claims 3 and 11. For support of this change, see Page 2, line 35 of the specification.

***Claim Rejections - 35 USC § 102***

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

8. Claims 1, 2, 4-10 and 12-16 are rejected under 35 U.S.C. 102(e) as being anticipated by Gavish et al (6,662,032 B1).

Gavish et al disclose a diagnostic device and further disclose at least one sensor adapted to be attached to a limb of the body, the sensor adapted to directly register movements with a predetermined resolution of movement of the limb; a processor adapted to control and record input signals from the at least one sensor; a comparator means adapted to compare the input signals with predetermined stored movements within a provided resolution for the preferred level when dieting in the memory; a feedback means adapted to provide an output signal to the user, whereby the output signal indicated how to adapt the movements to the stored movements, thus alerting the

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user to adapt physical activity to a level corresponding to the level when dieting, whereby physical activity is being correlated to the level of activity when dieting; the movement stored for the preferred level when dieting are correlated to at least one of the parameters of weight and height of the user; the feedback alerts the user to increase or decrease movements; the output signal is a tactile feedback signal; the processor and the comparator and feedback means are comprised in a portable housing with a display; the housing comprises the at least one sensor; the predetermined stored movements differ between different activities; attaching at least one sensor to a limb and directly registering movements with a predetermined resolution of the movement of the limb; controlling and recording input signals from the at least one sensor through a processor having a memory; comparing the input signals with predetermined stored movements within a provided resolution for the preferred level when dieting in the memory; and providing feedback through an output signal to the user whereby the output signal indicated how to adapt the movements to the stored movements, thus alerting the user to adapt physical body activity to a level corresponding to the dieting level. See Figure 14; Column 21, lines 11-21; Column 29, lines 48-67; Column 30, lines 1-11; Column 31, lines 39-48; Column 34, lines 33-67; and Column 35, lines 1-3.

***Claim Rejections - 35 USC § 103***

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 3 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gavish et al (6,662,032 B1) as applied to claims 1 and 9 above, and further in view of Teller et al (6,605,038 B1).

Gavish et al, as discussed above, disclose a diagnostic device but fail to disclose correlating movements to the user's body mass index.

Teller et al disclose a means for monitoring the fitness of a user and further disclose correlating movements to the user's body mass index. See Column 4, lines 14-22; Column 13, lines 31-53; and Column 19, lines 48-58.

Since both Gavish et al and Teller et al disclose means for monitoring movement and the health of the user, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the means of Gavish et al to include the use of the user's body mass index, as per the teachings of Teller et al, since it would provide an additional means of calculating a person's health based on the user's movements.

### ***Response to Arguments***

11. Applicant's arguments with respect to claims 1-16 have been considered but are moot in view of the new ground(s) of rejection.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian Szmaj whose telephone number is (571) 272-

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4733. The examiner can normally be reached on Monday-Friday, with second Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Max Hindenburg can be reached on (571) 272-4726. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



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